

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Anthony Wayne Sheppard,

Plaintiff,

vs.

Nancy A. Berryhill,
Acting Commissioner of Social Security
Administration,

Defendant.

Civil Action No. 4:17-cv-724-CMC

ORDER

Through this action, Plaintiff sought judicial review of the decision of the Administrative Law Judge (“ALJ”) denying Plaintiff’s application for disability insurance benefits and supplemental security income. ECF No. 1. The Magistrate Judge filed a Report and Recommendation on March 17, 2017, recommending the complaint be dismissed because Plaintiff failed to exhaust his administrative remedies by filing a request for review by the Appeals Council. ECF No. 10. The Magistrate Judge specifically noted Plaintiff must file his request with the Appeals Council within 60 days of the date he received his “Notice of Decision” from the Administrative Law Judge. Plaintiff filed objections on March 28, 2017. ECF No. 12. On March 29, 2017, this court adopted the Report and dismissed this action because Plaintiff did not seek review of the ALJ’s decision from the Appeals Council, and a federal court cannot review the case until a plaintiff timely does so.

On September 28, 2017, the court received a letter from Plaintiff and an attached letter from his mother. ECF No. 17. Plaintiff notes the Government did not answer his lawsuit and therefore is in default, and seeks back payment of Social Security Disability benefits. His mother’s letter discusses the medical issues and treatment Plaintiff has undergone.

The court is unable to determine whether Plaintiff received the Order dismissing his case; however, it is apparent he received the Report, as he filed objections. As stated in both the Report and the Order from March 2017, this court could not review Plaintiff's case until all administrative remedies were exhausted – namely, review of the ALJ's decision by the Appeals Council. Plaintiff failed to show he requested review by the Appeals Council in a timely manner (and still has not done so). The Government was never served with the Complaint due to this problem, and thus did not respond for that reason. The Government is not in default, and the court lacks jurisdiction to resolve this case.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
October 12, 2017